

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

LESLIE WASHINGTON,

Plaintiff,

CASE NO: 04-10352

v.

DISTRICT JUDGE DAVID M. LAWSON  
MAGISTRATE JUDGE CHARLES E. BINDER

JOHN DOE, Chief,  
Brownstown Police Dept., *et al.*,

Defendants.

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**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

**I. RECOMMENDATION**

For the reasons set forth below, **IT IS RECOMMENDED** that Plaintiff's motion for default judgment against Defendants Barone and FCI Danbury be **DENIED**.

**II. REPORT**

The *pro se* Plaintiff has filed a motion seeking a default judgment against Defendants Barrone and FCI Danbury for failure to answer or respond to this litigation. (Dkt. 77.) A review of the pleadings shows that documents were given to the U.S. Marshal's Service on August 27, 2007, for service on Defendant Barrone. As of this date, however, there is no documentation showing that Defendant Barrone has been served. Since there is no proof of service, Plaintiff has not shown that Defendant has "failed to plead or otherwise defend." FED. R. CIV. P. 55. Thus, Defendant Barrone cannot be defaulted. Moreover, a review of Plaintiff's Amended Complaint reveals that FCI Danbury is not a named party to this litigation. Two employees of that facility are named, but not the facility itself. An entity not a party to the litigation cannot be defaulted. Accordingly, I suggest that Plaintiff's motion be **DENIED**.

### III. REVIEW

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E. Binder  
CHARLES E. BINDER  
United States Magistrate Judge

Dated: November 28, 2007

### CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, electronically served on James Surowiec, Laurie Michelson and Geneva Halliday, served on Leslie Washington by first class mail, and served on District Judge Lawson in the traditional manner.

Date: November 28, 2007

By s/Jean L. Broucek  
Case Manager to Magistrate Judge Binder